UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

STATE OF MISSOURI, *et al.*,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States, *et al.*,

Defendants.

Case No. 4:24-cv-520-JAR

EXHIBIT 3

Letter from MOHELA to Department of Education (April 16, 2024)

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April 16, 2024

Mr. Jackson McClam
Contracting Officer
U.S. Department of Education – Federal Student Aid
Union Center Plaza
830 First St. NE, Room 91F3
Washington, DC 20202

Dear Mr. McClam:

Pursuant to Federal Acquisition Regulation ("FAR") 52.243-1, "Changes-Fixed Price," FAR 52.242-17, "Government Delay of Work," and Department of Education Acquisition Regulation ("EDAR") 3452.242-71, "Notice to the Government of Delays," the Missouri Higher Education Loan Authority ("MOHELA") is hereby notifying Federal Student Aid ("FSA") of directions and actions by FSA that MOHELA considers to be changes to Contract No. 910031-23-D-0004 (the "USDS Contract") and which are likely to affect the costs and time for performance.

In order to avoid or otherwise mitigate such impacts, we respectfully request FSA's approval by April 22, 2024, to transfer 1.5 million borrower accounts to one or more different loan servicers under the USDS Program, *i.e.*, borrowers whose accounts were already slated to be transferred to a different servicing platform in connection with the transition to USDS. Because the borrowers whose loans currently reside on the legacy servicing platform (COMPASS℠) are in the Public Service Loan Forgiveness ("PSLF") Program and may also be participating in the SAVE Program, this group of transferred borrowers would necessarily include a mix of those in PSLF and others not in PSLF.

Your approval of the transfers to one or more other servicers will benefit FSA's mission because MOHELA would not otherwise be capable of transferring from COMPASS to its USDS Fiserv platform quickly enough to meet important deadlines for FSA. As requested by FSA, all SAVE borrower accounts, including PSLF borrowers participating in SAVE, are to be transferred by May 31, 2024, in time for the monthly payment recalculation. FSA also wants the remaining PSLF borrowers to be transferred by June 30, 2024, important deadlines for contractual and regulatory purposes. Furthermore, transferring some PSLF borrower accounts to other servicers would be consistent with the USDS Contract's common structure for pricing, penalties, and allocations. Indeed, without such a transfer, MOHELA will be assigned all of the existing PSLF borrowers, which have different needs than other borrowers.

Background

Near the end of MOHELA's predecessor contract, under which MOHELA used the COMPASS platform, MOHELA and FSA agreed that MOHELA would service PSLF loans because the prior PSLF servicer also used the COMPASS system. The agreement for MOHELA to service those

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loans was limited to the predecessor contract and did not include an agreement that MOHELA would service all such PSLF loans in any subsequent contract.

By April 30, 2024, it is anticipated that MOHELA's PSLF loan processing and call center operations work under its predecessor contract with FSA will be ending. Some of this important work, however, will continue under different contract vehicles, including the USDS Contracts whereunder MOHELA and four other loan servicers are to share the loan servicing work relative to PSLF. The USDS Contracts anticipate that each of the five contractors will be paid the same rate per borrower account, which is referred to as "common pricing." Furthermore, all five USDS contractors must have a solution capable of executing the full range of servicing functions, including servicing borrowers whose loans are in the PSLF Program. *See* USDS Contract, Section C.3.2.b ("General Borrower Account Servicing Requirements … USDS Servicer shall ensure the solution can execute the full range of servicing functions … [which] include, but are not limited to … execution, discharge and forgiveness for Public Service Loan Forgiveness …"). Critically, that aspect of the USDS Program stands in contrast with the predecessor contract whereunder MOHELA was the only servicer for PSLF loans.

MOHELA has taken substantial steps to prepare for the transition to USDS, including having already transferred approximately 35% of the borrower accounts it services from its legacy servicing platform to its new USDS servicing platform. Primarily, borrower accounts that remain on MOHELA's legacy platform are in the PSLF Program, SAVE Program, or both which is because the legacy platform had been uniquely designed for PSLF servicing and to only adhere to the initial SAVE recalculations that occurred in 2023. There is an urgent need to move the borrower accounts off the legacy platform, however, because (1) MOHELA's predecessor contract with FSA is ending, and (2) per FSA's direction, the legacy servicing platform is not being maintained consistent with the USDS Program requirements.

To ensure borrowers are not impacted, MOHELA has provided FSA with a schedule to move the remaining loans to its new USDS platform. In connection therewith, MOHELA has repeatedly informed FSA that the volume of borrower accounts that remain to be transferred is too high to complete the transfers by June 30, 2024, unless at least 1.5 million borrower accounts are transferred to one or more different servicers, *i.e.*, because more work and time is required to transfer accounts off of the legacy platform and then onto MOHELA's new platform than to simply transfer the loan directly to another USDS servicer. MOHELA believed that FSA understood this approach and its necessity, with FSA having asked as recently as April 11, 2024, whether the transfers to other servicers could be effectuated with higher volumes in each batch of transfers. The very next day, however, FSA communicated that it does not intend for MOHELA to transfer any PSLF borrowers to other servicers under USDS.

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Contract Impacts

As noted above, the USDS Contract anticipates that all five contractors will be performing the same types of work, such that they are subject to the same pricing, same penalties, and methodology for allocating new accounts. FSA's apparent decision that MOHELA alone continue servicing all borrowers whose loans were in the PSLF Program as of the USDS go-live

date is fundamentally inconsistent with that common structure. Indeed, the servicing work for loans under the PSLF Program is generally more complex and costly than for other student loans due to the unique and changing rules that apply to their loans, steps required to process discharge files sent by FSA, identify the affected borrowers, and place forbearances.[1]

Furthermore, the USDS Contract reflects that it was always the parties' intentions for the USDS servicers to be allocated accounts from the legacy program in a fair and reasonable manner. *See, e.g.*, USDS Contract, Section C.2.a.i ("Customer Accounts Migration … USDS Servicer shall receive historical and current customer borrower accounts from Legacy Servicers …"), Section C.4.c.iii ("Transition Support (Phase-In) … During the Phase-In-Period, the USDS Servicer shall prepare to assume full responsibility for all areas of operation …"), and Section C.3.1.m ("Allocation of Current Borrower Accounts … It is anticipated that the movement of borrower accounts will be done with reasonable and prudent cause."). Relatedly, the USDS Contract anticipates that task orders will be competed among the USDS contractors, meaning that FSA's unilateral allocation of all PSLF accounts to MOHELA would be both inconsistent with the ordering procedures and place MOHELA on unequal footing. *See* USDS Contract, Section G(F) ("In accordance with FAR 16.505, Ordering, all USDS Servicers under the awarded IDIQ contracts pursuant to Solicitation No. 91003122R0007 shall be provided with fair opportunity to compete for Task Order awards unless an exception applies.").

Thus, FSA's newly-imposed directive that MOHELA will continue to service all legacy PSLF accounts is inconsistent with any reasonable interpretation of the USDS Contract terms. Moreover, to the extent that FSA is ordering MOHELA to perform in this manner despite the current contract terms, MOHELA is entitled to an increased price which will equitably compensate MOHELA for performing work that is different from, and more complex than, that of the other servicers on this "common pricing" and MOHELA is entitled to relief from the performance metrics used under the USDS Contract for the purposes of penalties and new account allocations.[2]

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[1] We acknowledge that many of the processing tasks are being moved to the "BPO Contract," but these tasks remain the responsibility of the USDS servicer and extend beyond the servicing work for non-PSLF loans.

[2] In addition to impacts under the USDS Contract, performance under MOHELA's predecessor contract with FSA (No. ED-FSA-11-D-0012) may have to be extended if FSA does not approve these transfers. That is because the volume of loans remaining to be transferred is too great to accomplish by June 30, 2024 – unless a substantial portion of those loans is transferred to another servicer. MOHELA does not recommend such an extension because, as noted above, the legacy platform has not been maintained in a manner that is consistent with the USDS Program requirements.

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Conclusion

For all of these reasons, MOHELA respectfully requests your approval by April 22, 2024[3] to transfer 1.5 million borrower accounts that currently reside on our legacy platform and include (in part) PSLF accounts to one or more other loan servicers under the USDS Contract. Doing so will ensure compliance with the USDS Contract terms that anticipate the PSLF Program loans be spread among all USDS contractors. Moreover, it will protect the best interests of FSA and borrowers by ensuring a timely and orderly transfer of their accounts to the new USDS platform.

Respectfully,

MOHELA

cc. Kimberly Kilpatrick
Contracting Officer
U.S. Department of Education – Federal Student Aid

[3] This date is significant because it allows for MOHELA to send transfer notification letters sufficiently in advance of the next batch of transfers to the USDS platform, which is scheduled for May 6, 2024. In addition, receiving FSA's approval by that date will allow for SAVE accounts to be transferred in time for recalculations to occur prior to the borrowers' July 2024 billing statements.

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